Supreme Court, U.S.
FILED

No. (1) 98-1909 MAY 26 1999

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In The Supreme Court of the United States

OCTOBER TERM, 1998

J. GRANT HUNEYCUTT, et al.,

Petitioners,

v.

CITY OF SUFFOLK,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the Supreme Court of Virginia err in holding that there was no reversible error when the City of Suffolk vacated the duly approved plat of J. Grant Huneycutt in reliance upon laws that were so unconstitutionally vague that a person of reasonable intelligence could not ascertain what conduct was proscribed? Are such laws so plainly repugnant to the 14th Amendment due process protections that this Court should exercise its constitutional authority to reverse the holding of the Supreme Court of Virginia?

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UNITED STATES STATUTES:

Title 28, § 1331 of the United States Code

Fourteenth Amendment of the United States Constitution

VIRGINIA STATUTES:

Suffolk Municipal Code § 25.9-4

Suffolk Municipal Ordinance 79-96

§15.2-2272 of the Code of Virginia, 1950, as amended.

§15.1-466(12) of the Code of Virginia, 1950, as amended.

In The

Supreme Court of the United States

J. Grant Huneycutt, et al.,

Petitioners,

V.

City of Suffolk,

Respondent,

Petition for Writ of Certiorari to the
Supreme Court of the United States

J. Grant Huneycutt, et al., respectfully petition for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is set out in the appendix, *infra*, 1a. That opinion affirmed the decision of the Circuit Court of the City of Suffolk, which is set out in the Appendix, *infra*, 2a.

JURISDICTION

Petitioner (plaintiff) filed this case in the Virginia Circuit Court in the City of Suffolk. This case is properly within the Court's federal question jurisdiction as provided for by Title 28, Section 1331 of the United States Code. Petitioner properly raised a federal question in the petition to the Supreme Court of Virginia, alleging the Section 25.9-4 of the Suffolk Municipal Code as to the part "...shall not be for the purpose of circumventing this section" and § 15.2-2272(2) of the Code of Virginia, 1950, as amended, are in violation of the Fourteenth Amendment of the U.S. Constitution.

STATEMENT OF THE CASE

On August 9,1995, the Appellant herein, J. Grant Huneycutt, transferred four parcels of his real property, located in the City of Suffolk: one parcel to each of his three daughters and one parcel to his wife. These parcels of land were transferred via "Deed of Gift," recorded on April 8, 1996. Prior to transferring said parcels, Mr. Huneycutt filed a "Family Subdivision Plat" (the Plat), pursuant to the Subdivision Ordinance of the City of Suffolk, Code § 25.3-1. Said plat was approved by the City on August 9, 1995.

On July 17, 1996, the Suffolk City Counsel voted to adopt Ordinance 79-96, effectively vacating said plat. The basis for the City's action was an accusation that Mr. Huneycutt effected the family transfer in an attempt to defeat the Family Subdivision Ordinance (Suffolk City Code Section 25.9-4). Suffolk City Code § 25.9-4 is derived from

authority granted by § 15.2-2272 of the Code of Virginia, 1950, as amended. The Suffolk City Counsel did not give Mr. Huneycutt any explanation regarding the reason for which they decided to vacate the plat.

ANALYSIS

Section 25.9-4 of the Suffolk Municipal Code, as to the part "..shall not be for the purpose of circumventing this section," and § 15.2272(2) of the Code of Virginia, 1950, as amended, are in violation of the Fourteenth Amendment of the U.S. Constitution. These statutes are void for vagueness because: 1) they fail to delineate, with sufficient specificity, the conduct that is prohibited; 2) they provide no guidelines for enforcement, thus inviting arbitrary enforcement; and 3) give no definitions for any act that would be a statute violation.

The Fourteenth Amendment to the United States Constitution states that "No state...shall...deprive any person of life, liberty or property, without due process of law." In determining whether a law contravenes the due process clause of the Fourteenth Amendment, the law must be examined for "definiteness or certainty of expression." *Kolender* v. *Lawson*, 461 U.S. 352, 357 (1983). The Fourteenth Amendment requires, at a minimum, a degree of certainty such that: 1) an ordinary person can understand what conduct is prohibited; 2) arbitrary or discriminatory enforcement is discouraged. Id. at 357. If these two criteria are not met the law must be deemed unconstitutional in accordance with the void for vagueness doctrine. A corollary of the void for vagueness doctrine is fair notice of prohibited conduct. Fair notice ensures that innocent people are not trapped by vague laws or laws which are arbitrarily enforced.

Grayned v. *City of Rockford*, 408 U.S. 104,108-109 (1972). A further danger of a vague statute is that it impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Id., at 109.

The Fourteenth Amendment requires that Legislators take measures to prevent arbitrary enforcement of the laws. "The more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine--the requirement that the legislature establish minimal guidelines to govern law enforcement.'" *U.S.* v. *Thomas*, 864 F2d 188, 194 (D.C. Cir. 1988) (quoting *Kolender* v. *Lawson*, 461 U.S. 352, 358).

Furthermore, all statutes are subject to the strictures of the void for vagueness doctrine, civil as well as penal: "Both liberty and property are specifically protected by the Fourteenth Amendment against any state deprivation which does not meet the standards of due process, and this protection is not to be avoided by the simple label a State chooses to fasten upon its conduct or its statute." *Giaccio* v. *Pennsylvania*, 382 U.S. 399, 402 (1966).

In the instant case, the Plaintiffs, herein, the Huneycutts, are accused of violating § 25.9-4 of the Code of the City of Suffolk. The Huneycutts effected a family transfer in accordance with § 25.9-4 of the Code of the City of Suffolk. The city approved the plat for this transfer but 11 months later vacated said plat per authority of the Code of Virginia, of Virginia, 1950, as amended, § 15.1-466 (12) and § 15.2272(2). Section 15.1-466 allows for the vacating of plats or parts thereof "By ordinance of the governing body of the county or municipality...on motion of one of its members or on application of any interested person." While the City Code section states that "...such division shall not be for the

purpose of circumventing this section," neither the Suffolk City Code § 25.9-4 nor § 15.1-466(12) nor § 15.2-2272(2) of the Code of Virginia, 1950, as amended, from which Section 25.9-4 is derived, and by which it is authorized, define what behavior constitutes "circumventing this section." The stated reason for vacation of the plat was that "[I]nformation became available that this (the Huneycutts') subdivision of land, under the Family Transfer Act, was done in an effort to circumvent the Subdivision Ordinance of the City of Suffolk." Yet, the City, in its defense, can point to no particular behavior which constitutes an effort to effect the proscribed circumvention--that is because there is no particular behavior that constitutes circumvention. The Huneycutts did sell the residue, or portion of land not conveyed in the family transfer, some 6 out of 15 acres on which their home was located. However, this conduct is not proscribed by either the Suffolk City Ordinance or by the Virginia Statute cited *supra*. A basic truth that should not need to be stated is that a statute cannot prevent one from selling his home.

Moreover, if the free alienability of the land, which is the subject of the family transfer plat, is to be implicitly constrained, how long is such constraint to endure? Certainly, infinite constraints violate the maxims and principles underlying American property law, to-wit: the rule against perpetuities. And yet, if the constraints on alienability of family transfer plats are realistically to be implied for a finite duration; query as to how long they are to endure. In the absence of specific statutory guidelines, one can only surmise and conjecture.

This is the particular quandary which *Grayned* challenges, i.e., failure to give a person of ordinary intelligence a reasonable opportunity to know what is proscribed. Moreover, as a result, "uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful

zone'... than if the boundaries of the forbidden area were clearly marked." *Grayned*, 408 U.S. at 109. In the absence of explicit proscriptions of conduct, the Huneycutts were innocent parties trapped by the lack of provision of fair warning.

Such entrapment is similar to that akin to that which Coates faced when he was convicted for violating an "anti-annoyance statute"-- a statute which this court ruled to be facially unconstitutional. *Coates* v. *City of Cincinnati* 402 U.S. 611. In that case, an Ohio ordinance which prohibited " 'conduct...annoying to persons passing by' " was found to be unconstitutionally vague because "no standard of conduct is specified at all" and therefore " 'men of common intelligence must necessarily guess at its meaning.' " *Id.* at 614 (quoting *Connally* v. *General Construction Co.*, 269 U.S. 385). Just as Coates was left guessing as to exactly what "annoying" meant, in the instant case, the Huneycutts are left to guess what it means to "intend to circumvent" a subdivision statute.

Moreover, the second due process interest elucidated above has been abrogated in the instant case by the City of Suffolk's use of § 15.2-2272 of the Code of Virginia, 1950, as amended, to vacate the family transfer plat. This Section of the Code of Virginia, 1950, as amended, provides for the vacation of a plat "by ordinance of the governing body of the county or municipality in which the land shown on the plat or part thereof to be vacated lies on motion of one of its members or on application of any interested person." This statute contains no explicit standards for the parties who apply it in the instant case the City of Suffolk. In the absence of any standards, the statute may be arbitrarily and discriminately applied. Thus, this statute violates the requirement that the legislature provide certain minimal guidelines to aid judges and administrative officials in their

enforcement efforts. *Thomas*, 864 F2d at 194. The City based its actions on what amounts to rumor and innuendo, evidenced by the phrase "Information became available ...." Moreover, the City of Suffolk had routinely granted family transfer plats. This is, however, the first time ever that the City has vacated such a plat, evidencing the fact that such action is arbitrary and discriminatory. Minimal guidelines are clearly missing; and the result is arbitrary and discriminatory application. Therefore, these statutes are plainly repugnant to the protections of the Fourteenth Amendment.

The Court of Appeals in Virginia found a loitering ordinance of the City of Richmond unconstitutional since the "public is not adequately apprised of the behavior that is to be proscribed" and "the ordinance vests too much discretion in the officers who enforce the ordinances and...allows for arbitrary and discriminatory enforcement." *Coleman* v. *City of Richmond*, 5 Va. App. 459, 364 S.E.2d 239 (1988). These same principles were also followed in *Perkins* v. *Commonwealth*, 12 Va. App. 7, 402 S.E.2d 229 (1991), *Bell* v. *Commonwealth*, 21 Va. App. 693, 467 S.E.2d 289 (1996) and *Thomas* v. *Commonwealth*, 25 Va. App. 256, 487 S.E.2d 289 (1997).

Moreover, the void for vagueness doctrine has been applied to civil statutes as well. In *Jackson* v. *W*, 14 Va. App. 391, 419 S.E.2d 385 (1992), the Court of Appeals of Virginia applies the doctrine to child abuse guidelines established by the Commissioner of the Department of Social Services. If the doctrine applies to guidelines issued by the Commissioner of Department of Social Services, then, likewise, such doctrine should also apply to subdivision ordinances enacted by municipalities and Commonwealth statutes permitting vacation of plats.

CONCLUSION

Therefore, § 25.9-4 of the Code of the City of Suffolk, as to the part "...shall not be for the purpose of circumventing this section" is overly vague and facially unconstitutional as it fails to delineate with specificity the conduct proscribed (circumvention). And § 15.2-2272(2) of the Code of Virginia, 1950, as amended, is facially unconstitutional because it violates the second prong of the vagueness test, as set forth in *Kolender* 461 U.S., at 357, viz: said statute lacks explicit standards for its application (plat vacation) which allows its arbitrary and discriminatory enforcement. Therefore, the Appellants move this Honorable Court to reverse the lower courts' decisions.

RESPECTFULLY SUBMITTED

J. GRANT HUNEYCUTT, ET AL.

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APPENDIX

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 17th day of December, 1998.

J. Grant Huneycutt, et al., Appellants,

against Record No. 981766
Circuit Court No. CH96-223

City of Suffolk, Appellee.

From the Circuit Court of the City of Suffolk

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 26th day of February, 1999.

J. Grant Huneycutt, et al., Appellants,

against Record No. 981766
Circuit Court No. CH96-223

City of Suffolk, Appellee.

Upon Petition for Rehearing

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 17th day of December, 1998 and grant a rehearing thereof, the prayer of said petition is denied.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF SUFFOLK

J. Grant Huneycutt, et als.	)	
	)	
Plaintiff	)	
	)	**CH96-223**
	)	
v.	)	
	)	
City of Suffolk, Virginia,	)	
a Municipal Corporation	)	

DISMISSAL ORDER

THIS CAUSE came to be heard on the issue of the authority of the City to vacate the plat in question, it being dispositive of this appeal, both parties were present, by, counsel, and argued and submitted briefs.

UPON CONSIDERATION WHEREOF, the Court finds that the City acted properly, both procedurally and substantively, and has the authority to vacate the plat under Virginia Code § 15.1-482 (b).

It is therefore, ORDERED that this appeal is hereby DISMISSED with prejudice.

And there being nothing further, this case is stricken from the docket.

Enter: this 28th day of May, 1998.

/S/ Westbrook J. Parker
CIRCUIT COURT JUDGE

Ordinance No. 76-96

AN ORDINANCE VACATING A FAMILY TRANSFER PLAT OF PROPERTY LOCATED AT THE END OF FIVE MILE ROAD AND NOW OR FORMERLY OWNED BY J. GRANT HUNEYCUTT AND BETTY C. HUNEYCUTT

BE IT ORDAINED by the Council of the City of Suffolk, Virginia as follows:

1. That, except as to those portions labeled "Residue Parcel" and "20' Ingress and Egress Easement", that certain plat entitled "Family Transfer Plat Showing Subdivision of Property Owned by J. Grant Huneycutt & Betty C. Huneycutt - Chuckatuck Borough - Suffolk, Virginia", dated June 12, 1995, and recorded in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, in Plat Cabinet 1, at 113-D, be, and hereby is, vacated pursuant to Section 15.1-482 of the Code of Virginia (1950), as amended, and Section 25.14-2 of the Code of the City of Suffolk, as amended.

2. This ordinance shall be effective upon adoption, and shall not be published.

3. That, after thirty (30) days from the adoption of this ordinance, a copy of this ordinance shall be recorded in the office of the Circuit Court Clerk for the City of Suffolk.

READ AND ADOPTED: July 17, 1996

A TRUE COPY: TESTE: Mary Lynn Dixon

28 U.S.C. § 1331 provides:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

14th Amendment of the United States Constitution:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdictions the equal protection of the laws.

§15.1-466 of the Code of Virginia, 1950, as amended, provides in relevant part:

A. A subdivision ordinance shall include reasonable regulation and provisions that apply to or provide:

12. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family.... Only one such division shall be allowed per family member, and shall not be for the purpose of circumventing this subdivision.

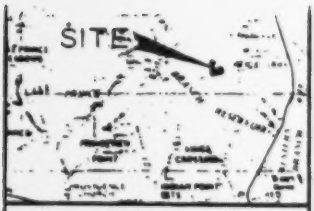
§15.2-2272 of the Code of Virginia, 1950, as amended, provides in relevant part:

...the plat or part thereof may be vacated....by ordinance of the governing body of the locality in which the land shown on the plat or part thereof to be vacated lies on motion of one of its members or on application of any interested person.

§ 25.94 of the Suffolk Municipal Code, derived from §15.1-466 cited above, provides in relevant part:

Reasonable provision shall be provided permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family.... Only one such division

shall be allowed per family member, and shall not be for the purpose of circumventing this subdivision.



- LOCATION MAP -

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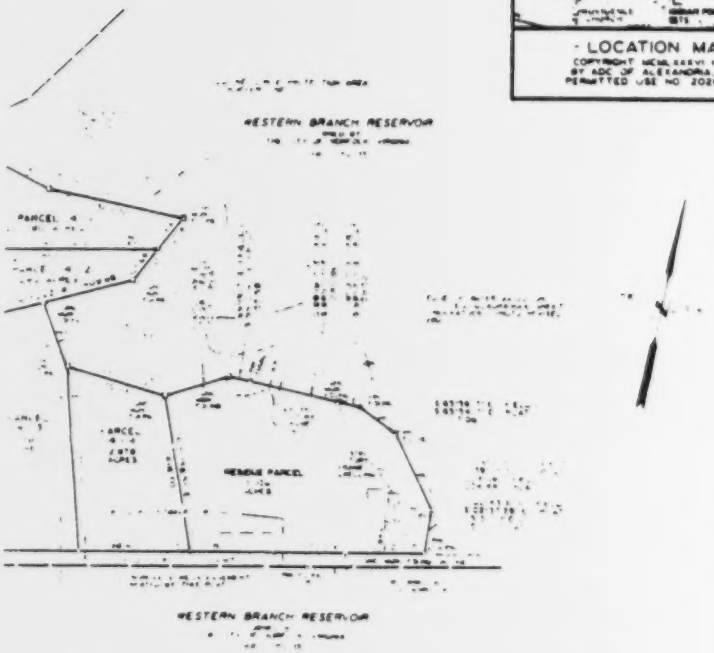
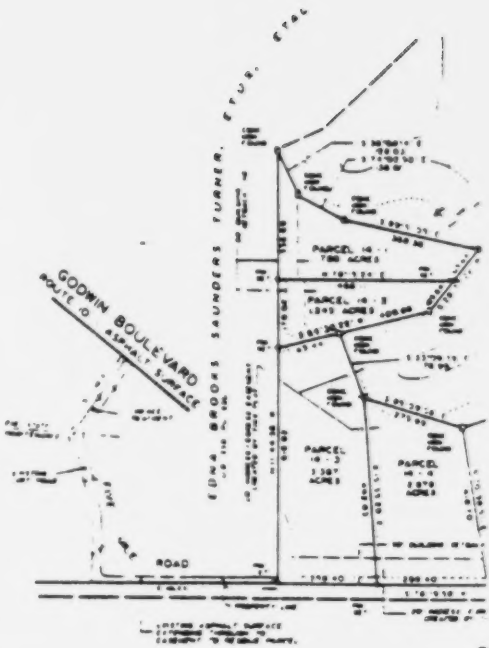


FAMILY TRANSFER PLAT
SHOWING
SUBDIVISION OF PROPERTY
OWNED BY
J. GRANT HUNEYCUTT &
BETTY C. HUNEYCUTT
NANSEMOND BOROUGH
SUFFOLK, VIRGINIA

SCALE: 1" = 100' APRIL 2, 1986

COURTNEY & WILCOX, P.C.
CIVIL ENGINEERS & SURVEYORS
SUFFOLK, VIRGINIA

BEST AVAILABLE COPY



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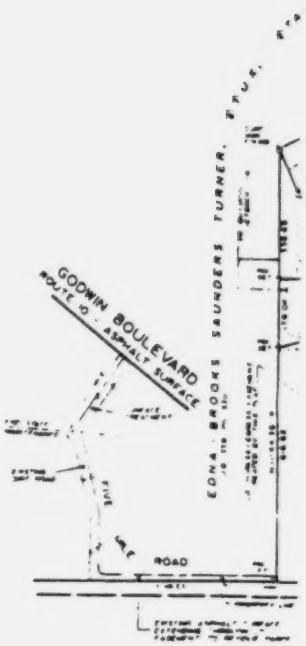

APPROVED

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